

# **7 FAM 950 SERVICE OF PROCESS ABROAD**

## **7 FAM 951 AUTHORITY**

(TL:CON-61; 8-30-94)

a. The Federal law governing service of process in civil cases is found in Rule 4 (i), Federal Rules of Civil Procedure, 28 U.S.C., *Appendix* [see also section 7 FAM 912.1 a]. Usually, the consular officer becomes involved only in service by agent (in which the agent may execute an affidavit of service before the consular officer) and in service pursuant to a letter rogatory [see section 7 FAM 953 for a description of a variety of methods used to serve process abroad].

b. Foreign Service officers are prohibited from serving process on behalf of private litigants and from appointing others to do so (22 CFR 92.85).

## **7 FAM 952 PROVISO ON VIOLATIONS OF JUDICIAL SOVEREIGNTY**

(TL:CON-61; 8-30-94)

Certain countries have informed the Department that some methods of service constitute violations of their judicial sovereignty. Consequently, consular officers should inform inquirers of the following provisos:

(1) *Switzerland (civil matters), and the Commonwealth of Independent States (Formerly the USSR): Letters rogatory are the sole method permissible for obtaining evidence. For evidence in criminal cases from Switzerland, the Mutual Legal Assistance Treaty is available. Since Switzerland maintains that service of process by international mail is a violation of their judicial sovereignty, service by international mail should not be attempted.*

(2) *China, Czech Republic, The Federal Republic of Germany, Norway, Slovakia, and Turkey: All object to Article 10 of the Hague Service Convention regarding service via postal channels. Service by international mail should not be attempted [see section 7 FAM 953.4 ].*

# **7 FAM 953 METHODS OF SERVICE OF PROCESS**

## **7 FAM 953.1 Service By Agent**

(TL:CON-61; 8-30-94)

In countries not party to the Hague Convention *on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, it is possible in most jurisdictions to retain a local attorney to serve legal documents. *In such a case the attorney or the attorney's agent can execute an affidavit before a consular officer or a local notary. Because service by agent is not recommended in cases where the enforcement of a judgment may be attempted later, interested parties should consult their attorneys about using this method.*

## **7 FAM 953.2 Service by International Registered Mail**

(TL:CON-61; 8-30-94)

Registered mail, with return receipt requested, may be sent to most countries of the world. The U.S. Postal Service's instructions on international registered mail give detailed information on mail service in most foreign jurisdictions.

## **7 FAM 953.3 Service by Letter Rogatory**

(TL:CON-61; 8-30-94)

Letters rogatory, discussed in Subchapter 7 FAM 930 for the taking of evidence, are also used for the service of process. Requesting parties may find it useful to retain a local attorney to monitor and expedite the progress of the letter rogatory.

## **7 FAM 953.4 Multilateral Conventions on Service**

(TL:CON-61; 8-30-94)

a. The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (reported in 28 U.S.C.A., Appendix, and with Rule 4, Fed. R. Civ. P.) provides for service of process by a designated central authority pursuant to a formal request. *Submit requests in connection with U.S. legal actions* on Form USM-94, Request for Service Abroad of Judicial and Extra-Judicial Documents. It is available in the United States from any U.S. Marshal's office. *The Inter-American Convention on Letters Rogatory and Additional Protocol is similar in scope and also provides for service of process by a designated central authority pursuant to a formal request. For a reprint of the Hague Convention, see 7 FAM 953 Exhibit 953.4a .*

b. The U.S. Central Authority for both conventions is the Office of International Judicial Assistance, also known as the Office of Foreign Litigation, Civil Division, Department of Justice, Washington, D.C. 20530.

c. If a requesting party encounters problems in dealing with the central authority of the host government in a country which is party to either convention, the consular officer may be requested to make appropriate inquiries of that central authority about the cause of the difficulty. Therefore, consular officers should maintain the current name and address of the foreign central authority in countries where the conventions are in force.

d. The Hague Convention is in force as of January 1, 1993, in Antigua and Barbuda, Barbados, Belgium, Botswana, Canada, China, Cyprus, Czech Republic, Denmark, Egypt, Germany, Finland, France, Greece Israel, Japan, Luxembourg, Malawi, The Netherlands, Norway, Pakistan, Portugal, Seychelles, Slovak Republic, Spain, Sweden, Turkey, United Kingdom, and United States.

e. The accession by the United Kingdom extends to Anguilla, Antigua, Bermuda, British Virgin Islands, Cayman Islands, Central and Southern Line Islands, Falkland Islands and dependencies, Gibraltar, Guernsey, Hong Kong, Isle of Man, Jersey, Montserrat, Pitcairn, St. Helena and dependencies, and Turks and Caicos Islands.

f. *The Inter-American Convention on Letters Rogatory and Additional Protocol is in force as of January 1, 1993, in Argentina, Chile, Ecuador, Guatemala, Mexico, Panama, Paraguay, Peru, Uruguay, and Venezuela.*

## **7 FAM 954 SERVICE OF SUBPOENAS ON U.S. CITIZENS OR LEGAL PERMANENT RESIDENTS**

### **7 FAM 954.1 Procedures**

(TL:CON-61; 8-30-94)

a. Consular officers serve only Federal criminal subpoenas unless otherwise advised by the Department (CA/OCS). Occasionally, a consular officer may be instructed by the Department (CA/OCS) to serve a State criminal subpoena. Any other request for the service of a subpoena should be denied and requesting parties should be informed of the proper methods of service in the host country [see section 7 FAM 953 ].

b. The consular officer usually receives a Federal criminal subpoena for service on a U.S. citizen or legal permanent resident, *(sometimes referred to as LPR), from the Department by FAX, under the Federal authority cited in section 7 FAM 912.2 [see sample FAX cover sheet in 7 FAM 964 Exhibit 954.1a ]*.

c. *The Department's FAX transmittal cover sheet provides guidelines for service that include the residence and work place address for the witness, along with instructions on how the subpoena should be served. While it is preferable to personally hand the witness the subpoena (or order to show cause, the copy of the court order, Government Travel Request (GTR) and any cash specified in the instructions), this may not always be possible. In such cases, a subpoena may be served by delivering it or leaving it for the party for whom it is intended.*

d. *If the Department furnishes specific instructions for personal hand delivery and the consular officer is unable to carry them out, the officer should report to CA/OCS briefly the reasons and circumstances of alternative delivery.*

e. After service has been made, the consular officer must supply, in an affidavit executed before another consular or *diplomatic* officer, the information called for in the space on the subpoena marked "RETURN." This is a no-fee service under Schedule of Fees item 58 (a). Promptly send the completed subpoena, with order attached, to the Department (CA/OCS) for relay to the clerk of the appropriate U.S. District Court.

f. *In Federal cases tender a GTR to the witness only at the time service is made. The GTR is for roundtrip air travel between the witness's residence and the city where the court is sitting. Travel is to be at economy jet rates and no U.S. Government funds shall be used to pay for first-class travel unless no other commercial service is reasonably available, or such travel is necessary for reasons of disability or medical conditions.*

g. Cash in the amount specified in the instruction must also be tendered to the witness at the time service is made.

h. *Inform the Department (CA/OCS) by telegram of the witness's estimated time of arrival.*

i. A consular officer who will incur travel expenses in effecting service should telegraph the Department (CA/OCS) for an appropriation number and fund code against which the travel may be charged. The appropriation number and fund code will not be the same as those used for the GTR.

j. If a subpoena or order to show cause comes directly from a requesting U.S. Court, the consular officer may proceed with service only if the court has provided 2 copies of the subpoena (the original or certified copy and a photocopy) and 2 copies of the order (a certified copy and a photocopy), as well as the appropriation number and fund code against which the GTR and per diem are to be charged. If all such documents are not received, contact the Department (CA/OCS) by FAX or telegram for clarification.

k. A subpoena must be served as soon as possible. The date of the witness's appearance, noted on the subpoena, is often only days away from the consular officer's receipt of the documents. In some cases, the consular officer may receive a subpoena from the Department. The matter will require two separate telegrams or FAX transmissions, one that gives instructions and another that provides facsimiles of the court order and the subpoena. The facsimiles are to be given *the same weight as originals once the FAX order and subpoena are received*, and the subpoena must be served according to the Department's instructions. Certified copies of the subpoena and the order will be sent subsequently to the consular officer by the fastest means available.

l. On serving the facsimiles, the consular officer should ask the witness whether the original documents, upon arrival at the consulate, should be held for pickup by the witness or mailed to the witness's address. The consular officer must make it clear, however, that service of the facsimiles constitutes valid service, whether or not the original documents are picked up or mailed.

m. The consular officer must note in the "RETURN" space on the subpoena that this instruction (either to pick up the documents or to have the documents mailed) was given to the witness [see section 7 FAM 954.1 b]. Include this information when reporting to the Department that service was made [see 7 FAM 954 Exhibit 954.1a ].

## **7 FAM 954.2 Civil and Administrative Subpoenas**

(TL:CON-61; 8-30-94)

Consular officers may receive requests for service of civil and administrative subpoenas. Refer such requests to the Department (CA/OCS) by telegram for decision.

## **7 FAM 954.3 Service of Subpoenas On Host Country or Third Country Nationals or Institutions**

(TL:CON-61; 8-30-94)

a. Consular officers should be aware that some countries are particularly sensitive to service of administrative subpoenas from U.S. administrative agencies, such as the Securities and Exchange Commission (SEC), Federal Trade Commission (FTC), Commodity Futures Trading Commission (CFTC), Internal Revenue Service (IRS), and others. *Report* to the Department (CA/OCS) any information available about proper methods of service of such documents *in their host country*.

b. A subpoena issued in the United States for service on a person other than a U.S. citizen or permanent resident alien has no force or effect outside the United States. Consular officers have no authority to serve subpoenas on non-U.S. citizens or permanent resident aliens. *Promptly report* such requests to the Department (CA/OCS) because often they have resulted in protests from host governments and should be avoided. The Department will inform the issuing authority of its error.

## **7 FAM 955 SERVICE PURSUANT TO THE FOREIGN SOVEREIGN IMMUNITIES ACT**

(TL:CON-61; 8-30-94)

a. Section 1608 of the Foreign Sovereign Immunities Act of 1976 (FSIA; 22 U.S.C. 1330, 1602) [see section 7 FAM 912.3 ] provides for service of process on a foreign state with the assistance of the Department of State in an action where the foreign state is a defendant and where service cannot be effected by the other methods prescribed in the Act.

b. Requests for service of FSIA cases are referred to posts only by the Department. *Such cases are rare, but complex, demanding special attention on the part of the consular officer.* Return to the Department (CA/OCS) any such request sent directly to the consular officer by a U.S. court or attorney.

c. The consular officer is required to effect service on the defendant foreign state by diplomatic note. Proof of service is made by attaching a certified copy of the Embassy's note to the second set of documents (summons, complaint, and notice of suit) and returning those documents, with the note, to the Department (CA/OCS) for relay to the clerk of the court. *For a sample certification using the prescribed wording, see 7 FAM 955 Exhibit 955c .*

d. Service pursuant to the FSIA is a statutory obligation; the consular officer may exercise no discretion in complying with the Act. See 7 FAM 955 Exhibit 955d for an excerpt of a Circular Diplomatic Note of December 10, 1976, apprising foreign missions of the Act. The officer must report by telegram to the Department (CA/OCS) the date the documents were received by the embassy, the date they were transmitted to the foreign ministry, and the date the executed request was sent to the Department for relay to the court. This report must also give the invoice, registry, and pouch numbers by which the documents were returned to the Department.

e. The diplomatic note transmitting the documents to the Foreign Ministry should conform generally to the following language, formatted as required by the Department's Correspondence Handbook, 5 FAH-1 , or the Secretariat Handbook:

The Embassy of the United States has the honor to refer the Foreign Ministry to the lawsuit entitled [title of lawsuit], in which the Government of [name of country] is a defendant. The case is pending in the United States District Court, Southern District of New York, docket number R-81-2083. The Embassy herewith transmits a summons and complaint. This note constitutes service of these documents upon the Government of [name of country] as contemplated in Title 28, United States Code, Section 1608(a)(4).

Under applicable United States law, a defendant foreign state in a lawsuit must file an answer to the complaint or some other responsive pleading within 60 days from the date of service of the complaint (that is, the date of this note) or face the possibility of having judgment entered against it without the opportunity of presenting evidence or arguments in its behalf. Accordingly, the Embassy requests that the enclosed summons and complaint be forwarded to the appropriate authority of the Government of [name of country] with a view towards taking whatever steps are necessary to avoid a default judgment.

Please note that under United States law and procedure, neither the Embassy nor the Department of State is in a position to comment on the present suit. Under the laws of the United States, any jurisdictional or other defense including claims of sovereign immunity must be addressed to the court before which the matter is pending, for which reason it is advisable to consult an attorney in the United States.

In addition to the summons and complaint, the Embassy is enclosing a "notice of suit" prepared by the plaintiff, which summarizes the nature of the action which has been filed against the government, and the factual allegations on which the case is based. The notice of suit includes a copy of pertinent United States laws concerning sovereign immunities.

## **7 FAM 956 SERVICE IN SECTION 340(d), INA CASES**

(TL:CON-61; 8-30-94)

a. Consular officers must deliver, or assist in delivering, to designated persons documents relating to proceedings pursuant to *8 U.S.C. 1451 (d), Section 340 (d) of the INA*, in the cancellation of certificates of naturalization when such documents are received from duly authorized officials of the Federal courts.

b. Responsibility for providing detailed instructions on the procedure for delivering such documents rests with the court or with the U.S. attorney concerned; consular officers must follow such instructions carefully. See 7 FAM 956 Exhibit 956b for a sample certificate of service, affidavit of consular officer serving process, and affidavit of second consular officer (or diplomatic officer) which constitute proof of service.

## **7 FAM 957 SERVICE AT REQUEST OF CONGRESS OR U.S. GOVERNMENT AGENCIES**

(TL:CON-61; 8-30-94)

Consular officers have no authority to serve legal process, such as subpoenas or citations, in connection with congressional investigations, on persons in their consular districts, nor may they serve such process at the request of U.S. Government agencies other than the Department of State. *Refer* to the Department (CA/OCS) all requests for such service [see 22 CFR 92.91].

## **7 FAM 958 AND 959 UNASSIGNED**

## 7 FAM 953 Exhibit 953.4a

### EXCERPT, THE HAGUE CONVENTION ON THE SERVICE ABROAD OF JUDICIAL AND EXTRADICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATERS

Appendix A

#### MULTILATERAL

Service Abroad of Judicial and Extrajudicial Documents

*Convention done at the Hague November 15, 1965;*

*Ratification advised by the Senate of the United States of America  
April 14, 1967;*

*Ratification by the President of the United States of America April 24,  
1967*

*Ratification by the United States of America deposited with the  
Ministry of Foreign Affairs of the Netherlands August 24,  
1967;<sup>1</sup>*

*Proclaimed by the President of the United States of America  
January 8, 1969;*

*Entered into force February 10, 1969*

**BY THE PRESIDENT OF THE UNITED STATES OF AMERICA**

#### **A PROCLAMATION**

WHEREAS the convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters done at The Hague on November 15, 1965, was signed for the United States of America

WHEREAS a certified copy of the text of the said convention in the English and French languages is word for word as follows:

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<sup>1</sup>For designations and declarations made in connection with the deposit, see page 13.  
[Footnote added by the Department of State.]

CONVENTION ON THE SERVICE ABROAD OF  
JUDICIAL AND EXTRAJUDICIAL DOCUMENTS  
IN CIVIL OR COMMERCIAL MATTERS

The States signatory to the present Convention,

Desiring to create appropriate means to ensure that judicial and extrajudicial documents to be served abroad shall be brought to the notice of the addressee,

Desiring to improve the organization of mutual judicial assistance for that purpose by simplifying and expediting the procedure,

Have resolved to conclude a Convention to this effect and have agreed upon the following provisions-

ARTICLE 1

The present Convention shall apply in all cases, civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad.

This Convention shall not apply where the address of the person to be served with the document is not known.

*Chapter I - Judicial documents*

ARTICLE 2

Each contracting State shall designate a Central Authority which will undertake to receive requests for service coming from other contracting States and to proceed in conformity with the provisions of article 3 to 6.

Each State shall organize the Central Authority in conformity with its own law.

ARTICLE 3

The authority or judicial officer competent under the law of the State in which the documents originate shall forward to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention, without any requirement of legalization or other equivalent formality.



The document to be served or a copy thereof shall be annexed to the request. The request and the document shall both be furnished in duplicate.

#### ARTICLE 4

If the Central Authority considers that the request does not comply with the provisions of the present Convention it shall promptly inform the applicant and specify its objections to the request.

#### ARTICLE 5

The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency -

(a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory;

(b) by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed.

Subject to sub-paragraph (b) of the first paragraph of this article, the document may always be served by delivery to an addressee who accepts it voluntarily.

If the document is to be served under the first paragraph above the Central Authority may require the document to be written in, or translated into, its official language or one of its official languages.

The part of the application, in the form attached to the present Convention, which contains a summary of the document to be served, shall be served with the document.

#### ARTICLE 6

The Central Authority of the State addressed or any authority which it may have designated for that purpose, shall complete a certificate in the form of the model annexed to this Convention.

The certificate shall state that the document has been served and shall include the method, the place and the date of service and the person to whom the document was delivered. If the document has not been served, the certificate shall set out the reasons which have prevented service.

The applicant may require that a certificate not completed by a Central Authority or by a judicial authority shall be countersigned by one of these authorities.

The certificate shall be forwarded directly to the applicant.

#### ARTICLE 7

The standard terms in the model annexed to the present Convention shall in all cases be written either in French or in English. They may also be written in the official language, or in one of the official languages, of the State in which the documents originate.

The corresponding blanks shall be completed either in the language of the State addressed or in French or in English.

#### ARTICLE 8

Each contracting State shall be free to effect service of judicial documents upon persons abroad, without application of any compulsion, directly through its diplomatic or consular agents.

Any State may declare that it is opposed to such service within its territory, unless the document is to be served upon a national of the State in which the documents originate.

#### ARTICLE 9

Each contracting State shall be free, in addition, to use consular channels to forward documents, for the purpose of service, to those authorities of another contracting State which are designated by the latter for this purpose.

Each contracting State may, if exceptional circumstances so require, use diplomatic channels for the same purpose.

#### ARTICLE 10

Provided the State of destination does not object, the present Convention shall not interfere with -

(a) the freedom to send judicial documents, by postal channels, directly to persons abroad;

(b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination;

(c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.

#### ARTICLE 11

The present Convention shall not prevent two or more contracting States from agreeing to permit, for the purpose of service of judicial documents, channels of transmission other than those provided for in the preceding articles and, in particular, direct communication between their respective authorities.

#### ARTICLE 12

The service of judicial documents coming from a contracting State shall not give rise to any payment or reimbursement of taxes or costs for the services rendered by the State addressed.

The applicant shall pay or reimburse the costs occasioned by -

(a) the employment of a judicial officer or of a person competent under the law of the State of destination;

(b) the use of a particular method of service.

#### ARTICLE 13

Where a request for service complies with the terms of the present Convention, the State addressed may refuse to comply therewith only if it deems that compliance would infringe its sovereignty or security.

It may not refuse to comply solely on the ground that, under its internal law, it claims exclusive jurisdiction over the subject-matter of the action or that its internal law would not permit the action upon which the application is based.

The Central Authority shall, in case of refusal, promptly inform the applicant and state the reasons for the refusal.

#### ARTICLE 14

Difficulties which may arise in connection with the transmission of judicial documents for service shall be settled through diplomatic channels.

#### ARTICLE 15

Where a writ of summons or an equivalent document had to be served abroad, under the provisions of this Convention, and the defendant has not appeared, the defendant shall not be adjudged to be in default until it is established that -

(a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or

(b) the document was actually delivered to the defendant or to his residence by another method provided for by the present Convention;

and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

Each contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled -

(a) the document was transmitted by one of the methods provided for in the present Convention;

(b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document;

(c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the state addressed.

Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measure

#### ARTICLE 16

When a writ of summons or an equivalent document instituting a proceeding had to be served abroad, under the provisions of the present Convention, and a judgment had been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the

expiration of the time for appeal from the judgment if the following conditions are fulfilled -

(a) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal, and

(b) the defendant has disclosed a *pri-ma facie* defence to the action on the merits.

An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

Each contracting State may declare that the application will not be entertained if it is filed after the expiration of a time to be stated in the declaration, but which shall in no case be less than one year following the date of the judgment.

This article shall not apply to judgment concerning status or capacity of persons.

*Chapter II - Extrajudicial documents*

ARTICLE 17

Extrajudicial documents emanating from authorities and judicial officers of a contracting state may be transmitted or served in another contracting State by the methods and under the provisions of the present Convention.

*Chapter III - Final clause*

ARTICLE 18

Each contracting State may designate other authorities in addition to the Central Authority and shall determine the extent of their competence.

The applicant shall, however, in all cases, have the right to address a request directly to the Central Authority.

Federal States shall be free to designate more than one Central Authority.

ARTICLE 19

To the extent that the internal law of a contracting State permits methods of transmission, other than those provided for in the preceding articles, of judicial documents coming from abroad, for service within its territory, the present Convention shall not affect such provisions.

ARTICLE 20

The present Convention shall not prevent an agreement by any two or more contracting State -

(a) to dispense with the necessity for duplicate copies of transmitted documents as required by article 3, paragraph 2;

(b) to dispense with the language requirements of article 5, paragraph 3, and article 7;

(c) to dispense with the provisions of article 12, paragraph 2.

ARTICLE 21

Each contracting State shall, at the time of the deposit of its instrument of ratification or accession, or at a later date, inform the Ministry of Foreign Affairs of the Netherlands of the following—

(a) the designation of the Central Authority or the Central Authorities and of the other authorities, if any, pursuant to article 19;

(b) the designation of the authority competent to complete the certificate pursuant to article 6;

(c) the designation of the authority competent to receive documents transmitted by consular channels, pursuant to article 9;

(d) opposition to the use of methods of transmission pursuant to article 8 and 10;

(e) the declarations pursuant to article 15, paragraph 2, and article 16, paragraph 3;

(f) all modifications of the above designations, opposition and declarations.

ARTICLE 22

Where parties to the present Convention are also parties to one of both of the Conventions on civil procedure signed at The Hague on 17th July 1905, and on 1st March 1954, this Convention shall replace as between them articles 1 to 7 of the earlier Conventions.

ARTICLE 23

The present Convention shall not affect the application of article 23 of the Convention on civil procedure signed at The Hague on 17th July 1905, or of article 24 of the Convention on civil procedure signed at The Hague on 1st March 1954.

These articles shall, however, apply only if methods of communication, identical to those provided for in these Conventions, are used.

#### ARTICLE 24

Supplementary agreements between parties to the Convention of 1905 and 1954 shall be considered as equally applicable to the present Convention, unless the parties have otherwise agreed.

#### ARTICLE 25

The present Convention shall not derogate from Convention containing provisions on the matters governed by this Convention to which the contracting States are, or shall become, Parties.

#### ARTICLE 26

The present Convention shall be open for signature by the States represented at the Tenth Session of the Hague Conference on Private International Law.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

#### ARTICLE 27

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of article 26.

The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

#### ARTICLE 28

Any State not represented at the Tenth Session of the Hague Conference on Private International Law may accede to the present Convention after it has entered into force in accordance with the first paragraph of article 27. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for such a State in the absence of any objection from a State, which has ratified the Convention before such deposit, notified to the Ministry of Foreign Affairs of the Netherlands within a period of six months after the date on which the said Ministry has notified it of such accession.

In the absence of any such objection, the Convention shall enter into force for the acceding State on the

first day of the month following the expiration of the last of the periods referred to in the preceding paragraph.

#### ARTICLE 29

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for the territories mentioned in such an extension of the sixtieth day after the notification referred to in the preceding paragraph.

#### ARTICLE 30

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of article 27, even for State which have ratified it or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other contracting States.

#### ARTICLE 31

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in article 26, and to the State which have acceded in accordance with article 28, of following —

(a) the signatures and ratifications referred to in article 26,

(b) the date on which the present Convention enters into force in accordance with the first paragraph of article 27;

(c) the accessions referred to in article 28 and the dates on which they take effect;

(d) the extensions referred to in article 29 and the dates on which they take effect;

(e) the designation opposition and declarations referred to in article 21;

(f) the denunciations referred to in the third paragraph of article 30.

## 7 FAM 954 Exhibit 954.1a

# FAX TRANSMISSION OF FEDERAL CRIMINAL SUBPOENA FOR SERVICE ON U.S. CITIZEN OR LEGAL PERMANENT RESIDENT AND RETURN AFFIDAVIT

UNCLASSIFIED

OPERATIONS MEMORANDUM

FAX TRANSMISSION

(Date)

TO : Amembassy: \_\_\_\_\_

FROM : Department of State (CA/OCS)

SUBJECT : JUDICIAL ASSISTANCE: Name of Case: Service of Subpoena Upon  
\_\_\_\_\_

REF : (a) 7 FAM 955; (b) 28 U.S.C. 1783; (c) 22 CFR 92.86 - 92.88

BACKGROUND: This is an URGENT judicial assistance request for service of a subpoena on a U.S. citizen or permanent resident alien as authorized by 28 U.S.C. 1783. The consular officer should be aware that a subpoena, by its very nature, is a document which the person to be served may not be anxious to receive. The consular officer should not, therefore, give the individual advance warning that the post wishes to serve a subpoena on that person. Moreover, if the post receives advance notification from the U.S. Department of Justice via telegram of the need for the travel of a witness (7 FAM 944) which includes fiscal data, post should carefully review the text of the Justice Department telegram to make certain that it does not also state that the consular officer will be asked to serve a subpoena on the witness. This will preclude the post from inadvertently contacting a witness about travel arrangements before the subpoena has been served.

FAX COPY OF SUBPOENA AND COURT ORDER: In view of the short lead time between the date the witness must appear before the court as specified in the subpoena and the time available for the consular officer to effect service, this request is being transmitted to post via fax. Service of a fax copy of the subpoena and the court order by the \_\_\_\_\_ consular officer is acceptable practice.

UNCLASSIFIED

UNCLASSIFIED

INSTRUCTIONS FOR SERVICE OF SUBPOENA,  
COURT ORDER, AND ANY CASH ADVANCE

Enclosed is a copy of a request from \_\_\_\_\_,  
\_\_\_\_\_, Assistant United States Attorney, for the  
\_\_\_\_\_ District of \_\_\_\_\_  
requesting service of a subpoena on a national or legal permanent resident of the  
United States.

The Assistant United States Attorney advises that the witness,  
\_\_\_\_\_, can be located at the following  
addresses:

(Business) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Home) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

A consular officer is requested to locate the witness and to deliver to (him/her) the original/  
fax copy of the subpoena and court order and a Government Travel Request (GTR) and any  
cash advance specified in the court order.

PROOF OF SERVICE: After service is effected, the consular officer should execute the "Re-  
turn" portion of the affidavit. This is a statement under penalty of perjury ( 7 FAM 831 , 28  
U.S.C. 1746). If the subpoena does not include a "Return" portion, the consular officer  
should execute an affidavit before a second consular officer along the lines of 7 FAM 956  
Exhibit 956b (p. 2). The second consular officer should then execute the certification along  
the lines of 7 FAM 956 Exhibit 956b (p. 3). This is a NO FEE service under Tariff of Fees  
items 58(a). The completed subpoena, with a copy of the order attached, and the evidence  
that service has been effected (either the "Return" portion of the subpoena or the consular  
officer's affidavit of service and accompanying consular certification), should be forwarded  
promptly to the Department (CA/OCS) for transmittal to the Clerk of the appropriate United  
States District Court. The post should advise the Department via telegram that service has  
been effected and that the return documents are en route to the Department.

UNCLASSIFIED

UNCLASSIFIED

As noted above, a GTR must be tendered to the witness at the time service is made. (A cash advance in the amount of \_\_\_\_\_/No cash advance) is authorized in this case. The GTR is for round trip air transportation between the witness's residence and the city where the court is sitting. Transportation is to be at the lowest available rate consistent with U.S. Government travel regulations.

Charge GTR against Department of Justice Appropriation Number 15-0311, Fees and Expenses of Witnesses Fund, Code \_\_\_\_\_.

cc: DOJ/MGT/SAU:Harry White, Office of Special Authorizations, Department of Justice, Management Division, Room 4228, 13th & Pennsylvania Ave., NW, Washington, DC 20530; fax: 202-307-1932; tle: 202-307-1942.

UNCLASSIFIED

Exhibit 954.1a—continued

AO 89 (Rev. 5/85) Subpoena	
<h1>United States District Court</h1>	
DISTRICT OF NEVADA	
UNITED STATES OF AMERICA v.	SUBPOENA
CASE NUMBER:CR	
TYPE OF CASE <input type="checkbox"/> CIVIL <input checked="" type="checkbox"/> CRIMINAL	SUBPOENA FOR <input checked="" type="checkbox"/> PERSON <input type="checkbox"/> DOCUMENT(S) or OBJECT(s)
TO:	
YOU ARE HEREBY COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.	
PLACE FOLEY FEDERAL BUILDING 300 Las Vegas Blvd Las Vegas, Nevada 89101 PLEASE CALL ATTORNEY WHEN SERVED AT (702) 383-3327	COURTROOM No. 2 Third Floor DATE AND TIME July 16, 1990 8:30 a.m., or as directed by
YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):* counsel	
<input type="checkbox"/> See additional information on reverse	
This subpoena shall remain in effect until you are granted to depart by the court or by an officer acting on behalf of the court.	
U.S. MAGISTRATE OR CLERK OF COURT CAROL C. FITZGERALD (BY) DEPUTY CLERK JANET GONZALEZ	DATE 22 Feb. 1990
This subpoena is issued upon application of the: <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant <input type="checkbox"/> U.S. Attorney	QUESTIONS MAY BE ADDRESSED TO:  ATTORNEY'S NAME, ADDRESS, AND PHONE NUMBER
*If not applicable, enter "none".	





Jakarta, Indonesia

RETURN

Received this subpoena at Jakarta, Indonesia, on April 3, 1994, and on April 3, 1994, I served it on the within named Charles Reimer by delivering a copy to Huffco Indonesia, Kuningan Plaza South Tower, 6th-11th floors, Suite 601, Jalan H.R. Rasuna Said, Kav. C11/14, Jakarta, Indonesia, and tendering to Charles Reimer

\$100 (one hundred dollars)- -advance fees and expenses  
of witness allowed by law.

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the return of service and statement of service fees is true and correct.

---

Marcia E. Cole

Vice Consul of the United States  
of America

County: Indonesia  
Province: Daerah khusus Istimewa (DKI)  
City: Jakarta

Embassy of the United States of America  
Date: April 3, 1994

Republic of Indonesia            )  
City of Jakarta                    )  
Embassy of the United States    )  
  of America                    )

Subscribed and sworn to before me, David A. Gutschmit, Vice Consul of the United States of America at Jakarta, Indonesia, duly commissioned and qualified, this third day of April, 1994.

David A. Gutschmit  
Vice Consul of the United States of America

## 7 FAM 955 Exhibit 955c

### SAMPLE OF A CERTIFICATE OF SERVICE UNDER THE FOREIGN SOVEREIGN IMMUNITIES ACT

Certificate of Service  
Under the Foreign Sovereign Immunities Act

VENUE.

Islamic Republic of Mauritania )  
(Name of Country) )

Province of Trarza )  
(Name of Country, Province, etc.) )

City of Nouakchott )  
(Name of City) )

Embassy of the United )  
State of America )  
(Name of Foreign Service Post) )

ss:

I certiy that this is a true copy of the diplomatic note of the Embassy of the United States of America which was delivered to the Ministry of Foreign Affairs of the Islamic Reuplic of Mauritania.

Diplomatic Note Number 101  
(Number of Diplomatic Note)

March 14, 1994  
(Date of Note)

(Signature of Consular Officer)

Elizabeth C. Halbert  
(Typed Name of Consular Officer)

Consul of the United States of America  
(Title of Consular Officer)

Embassy of the United States of America  
Name of Foreign Service Post

(SEAL)

March 16, 1994  
(Date)

## **7 FAM 955 Exhibit 955d**

### **EXCERPT, CIRCULAR DIPLOMATIC NOTE FROM THE SECRETARY OF STATE DATED DECEMBER 10, 1976, ON SERVICE OF PROCESS REQUIREMENTS**

**Digest  
of  
United States Practice  
in  
International Law  
1976**

by  
Eleanor C. McDowell

*Office of the Legal Adviser  
Department of State*

**Earlier volumes:**

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**DEPARTMENT OF STATE PUBLICATION 8909  
Release September 1977**

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Washington, D.C. 20420  
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SOVEREIGN IMMUNITY

327

5. Nature and purpose of the proceedings: why the foreign state (or political subdivision) has been named: relief requested:

6. Date of default judgement (if any):

7. A response to a "Summons" and "Complaint" is required to be submitted to the court, not later than 60 days after these documents are received. The response may present jurisdictional defenses (including defenses relating to state Immunity).

8. The failure to submit a timely response with the court can result in a Default Judgement and a request for execution to satisfy the judgement.

9. Questions relating to state immunities and to the jurisdiction of United States courts over foreign states are governed by the Foreign Sovereign Immunities Act of 1976, which appears in sections 1330, 1391(f), 1441(d), and 1602 through 1611, of Title 28, United States Code (Pub. L. 94-593; 90Stat. 2891).

*Fed. Reg.* Vol. 42, No. 22, Feb. 2, 1977, p. 6367.

By a circular note dated December 10, 1976, the Department of State informed all foreign embassies in Washington of the enactment of the Foreign Sovereign Immunities Act and called their attention to significant aspects of the legislation, as follow:

1. The legislation will make substantial changes in United States law on the question of when a foreign state has immunity from suit. The legislation incorporates the restrictive doctrine of sovereign immunity which the United States has consistently followed since the Tate Letter of 1952, as the appropriate rule of modern international law. It has been the practice of the United States Government, since 1973, not to claim immunity for itself in foreign courts in any case when immunity would not be accorded to a foreign state under the new legislation.

2. The new legislation will eliminate the current practice in the United States of seizing or attaching foreign government property, as a method for obtaining jurisdiction against a foreign state or its entities. Section 1609 of the statute affords an absolute immunity from such jurisdictional attachments.

3. In addition to questions of state immunity, the new legislation will also prescribe the jurisdiction of Federal courts in the United States over foreign states and their agencies and instrumentalities. Under the statute, jurisdiction does not arise from the attachment of property, or from the service of process. Instead, jurisdiction depends on the existence of some connection (or contact) between the United States and the events giving rise to the litigation. These required connections (or contacts) are mentioned in the text of section 1605 of the statute. They are also incorporated by reference into the jurisdictional provisions of section 1330.

4. The statute also requires that adequate notice of a suit be given to the foreign state. This notice must be given by the service of judicial documents (in particular, a summons and complaint) in accordance with section 1608 of the statute. This service of notice, again does not confer jurisdiction, but is intended to inform the foreign state of the existence of the legal proceeding. It should also be noted that section 1608(a)(4) of the statute requires the Department of State to deliver this notice through diplomatic channels, in cases where other methods of service are unavailable.

5. The new legislation will provide, under limited circumstances, for execution against certain commercial and commercially related property, in order to satisfy a

328 STATE TERRITORY, JURISDICTION, AND IMMUNITIES

final judgement against a foreign state or its entities. These limited circumstances are prescribed in section 1610(c) and 1611 of the statute. It should be noted that under section 1610(c), a foreign state or its entities must be afforded a reasonable opportunity to satisfy a judgement before execution can be accorded.

6. The new statute precludes the Department of State from making decisions on state immunity. Such decisions must be made exclusively by the courts. Thus, when the legislation takes effect on January 19, 1977, the Department will not be able to continue its prior practice of entertaining diplomatic requests to determine questions of sovereign immunity, or of conveying such determinations of immunity to an American court...

Dept. of State File No. P77 0014-208.

***Department of State Determinations***

The Department of State, at the request of the Canadian Embassy in Washington, issued on February 20, 1976, a suggestion of sovereign immunity in the case of *Semonian v. Crosbie, et al.*, Civil Action NO. 74-4893-T, in the U.S. District Court for the District of Massachusettes. The suggestion was filed with the Court by the Department of Justice on February 27, 1976. The Embassy had requested a suggestion of immunity on behalf of the following defendants: the Province of Newfoundland ("the Province"); a crown corporation named Labrador Lineboard Ltd.; Frank Moores, Premier and First Minister of the Province, and John C. Crosbie, Minister of Intergovernmental Relations and Minister of Fisheries of the Province.

The action concerned the exploitation of timber resources on public lands owned by the Province and a Canadian corporation, Canadian Javelin, Ltd., relating to the exploitation of these resources.

In a letter of February 20, 1976, to the Attorney General, Mark B. Feldman, Deputy Legal Adviser of the Department of State, described the pending case and the Department's determination as follows:

\* \* \*

The amended complaint sets forth five causes of actions: (1) alleged breach by the Province of a May 1, 1972, settlement agreement between it and Canadian Javelin, by failing to pay money said to be owing under the agreement; (2) alleged fraud and coercion by the Province and its officials in causing Canadian Javelin to enter into this settlement agreement; (3) alleged willful misrepresentation by the Province and its officials, in inducing Canadian Javelin to enter into this settlement agreement dated November 21, 1969, through representations that certain timber reserves existed; (4) alleged willful misrepresentation and fraud by

## 7 FAM 956 Exhibit 956b

### SAMPLES OF CERTIFICATE OF SERVICE OF PROCESS, AFFIDAVIT OF CONSULAR OFFICER WHO SERVED PROCESS, AND AFFIDAVIT OF SECOND OFFICER ABOUT SERVICE OF PROCESS

Sample of a Certificate of Service of Process  
on a Designated Individual or Company

State of California

VS.

CR. No. 09200

*Harold D. Brown*

REQUESTING AUTHORITY:

Circuit Court of the  
Circuit, State of California

SERVE AT:

*Kevin Sheridan, 55 Elgin Road,  
Ballsbridge, Dublin Ireland*

NAME OF ATTORNEY OR  
OTHER ORIGINATOR:

*Xavier Sanchez  
Prosecuting Attorney  
Los Angeles, California*

NAME AND ADDRESS  
OF PERSON SERVED

*Kevin Sheridan, 55 Elgin Road,  
Ballsbridge, Dublin, Ireland*

SIGNATURE OF PERSON SERVED:

\_\_\_\_\_

DATE OF SERVICE:

\_\_\_\_\_



Sample of an Affidavit of a Consular Officer Who  
Served Process

VENUE.

_____ Ireland _____	)	
(Name of Country)	)	
	)	
_____ County of Dublin _____	)	
(Name of County, Province, etc.)	)	
	)	
_____ City of Dublin _____	)	ss.
(Name of City)	)	
	)	
Embassy of the United States	)	
_____ of America _____	)	
(Name of Foreign Service Post)	)	

I hereby certify that I have personally served a certified true copy of an indictment and a copy of a warrant, copies which are attached hereto, on the individual at the address shown on the annexed certificate of service on the date indicated.

\_\_\_\_\_  
(Signature of Affiant)

Malcom D. Simms  
(Typed Name of Affiant)

Vice Consul of the United States  
(Title of affiant)

March 17, 1994  
(Date)

Sample of an Certification of a Second Consular Officer About  
a Consular Officer a Affidavit of Service of Process

VENUE.

<u>Ireland</u>	)	
(Name of Country)	)	
	)	
<u>County of Dublin</u>	)	
(Name of County, Province, etc.)	)	
	)	ss.
<u>City of Dublin</u>	)	
(Name of City)	)	
	)	
<u>Embassy of the United States</u>	)	
<u>of America</u>	)	
(Name of Foreign Service Post)	)	

SUBJECT: Service of Process By Malcolm D. Simms  
(Typed Name of Consular Officer)

Vice Consul of the United States of American  
(Title of Consular Officer)

I certify that on this day the individual named above appeared before me and, being  
duly sworn, made the statements set forth in the attached instrument.

\_\_\_\_\_  
(Signature of Consular Officer)

John B. Skeffington  
(Typed Name of Consular Officer)

Consul of the United States of America  
(Title of Consular Officer)

March 14, 1994  
(Date)

